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Memorandum

To: Mike Suplee, PhD
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From: Scott Anderson, P.E.
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Re: Memo from Members of the Nutrient Work Group Technical Subcommittee to
Nutrient Work Group

We appreciate the opportunity to comment on the referenced memorandum. Our comments regarding the memorandum are as follows:

1. We attended all five meetings held and it is our opinion that the subcommittee did not reach a consensus regarding the proposed HAC. The HAC as proposed, represent numbers put forth by the DEQ. If anything, the bulk of the participants in the subcommittee, outside of the regulatory agencies, indicated that there was insufficient time, lack of technical documentation, inadequate public involvement and lack of support for more restrictive HAC. Suggestions that the existing HAC under the current variance process be retained until the next triennial review were disregarded. The Department appears to be committed to completing the rule revision quickly rather than correctly.
2. We believe that the current variance criteria in DEQ Circular 12B represent appropriate HAC for the State of Montana. Montana is well ahead of other states in the nation in adopting numeric nutrient criteria and it is surprising that our current regulatory process is not considered to be adequate, particularly by the Department itself. To date, we have seen no evidence that Montana's current variance process has been formally rejected by the EPA for non-compliance with 40 CFR 131.14.
3. It is our opinion that the process to modify Circular 12B with HAC limits underway by the DEQ is inconsistent with the requirements of MCA 75-5-313 regarding the criteria prescribed in the enabling legislation for revisions to variance under subsection 7(b). This section states that *"if more cost-effective and efficient treatment technologies are available, the concentration levels provided in in subsection 5(b) must be updated"*.

There has been no demonstration that the advanced treatment technologies required to meet the proposed HAC are either cost-effective or efficient. Cost-effectiveness is determined by a specific technical and economic analysis that is well defined by the Department in the planning process outlined for preparation of Preliminary Engineering Reports. Accepted engineering criteria for determination of cost-effectiveness have not been utilized in the current process to adopt new HAC. The criteria now being utilized by the Department appears to be that variance standards will be a function of the how the limits of technology might be achieved within the constraints of affordability criteria mandated by the EPA.

There has been concern expressed regarding litigation associated with Montana's variance process. Perhaps the Department's legal staff should advise the Nutrient Work Group if the proposed rule revision is consistent with the intent of MCA 75-5-313.

4. We would note that there has been no demonstration by the Department in the current rule-making process that impaired water quality in Montana will be restored or even benefitted by the more restrictive criteria. Cost of compliance with the new criteria will likely far outweigh any benefits. Ultimately the process of making centralized wastewater treatment inordinately expensive to build and operate may be counterproductive in protection of water quality by pushing development towards rural subdivisions utilizing individual septic systems, creating additional sources of non-point source pollution.

5. There is significant lack of supporting data for mechanical plants < 1.0 mgd, including minimal input from public works officials from the impacted communities. Cost data, other than for Stevensville, was not provided outside of the TetraTech report which was shown to be inaccurate in many areas and generally underestimated costs to meet the proposed HAC. The conclusions in the draft memorandum indicated that it was not affordable to meet HAC of 7.0 mg/l TN and 0.5 mg/l TP. There was no documentation provided that meeting lessor limits of 10.0 TN and 1.0 TP are affordable. The draft memorandum also suggested that "optimization" can be relied on to meet the lower limits at minimal cost, largely as a suggestion derived from the TetraTech report. This overly optimistic approach to establishment of restrictive nutrient standards should not be used until actual plant operating documentation is developed that shows it is possible to operate plants at these low nutrient levels. Given the lack of actual cost data regarding plant upgrades to meet HAC, we believe that the variance limits of 15.0 mg/l TN and 2.0 mg/l TP should be retained.